

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
JANELYS HERNANDEZ, :
Plaintiff, :
: 23 Civ. 3521 (LGS)
-against- :
: ORDER
JACKS SURF & SPORT SHOP, :
Defendant. :
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LORNA G. SCHOFIELD, District Judge:

WHEREAS, the Order dated June 15, 2023, instructed Plaintiff to present an Order to Show Cause for Default Judgment and related papers as provided in the Court's Individual Rules by July 19, 2023. Plaintiff did not comply with that Order. The Order dated July 21, 2023, again instructed the Plaintiff to present an Order to Show Cause for Default Judgement, by July 28, 2023. The July 21 Order warned that if no Order to Show Cause was filed, the case would be dismissed for failure to prosecute;

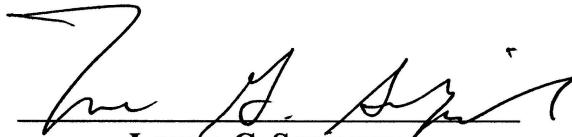
WHEREAS, Plaintiff has not presented an Order to Show Cause for Default Judgment and related papers. Defendant has not appeared;

WHEREAS, Federal Rule of Civil Procedure 41(b) authorizes a district court to dismiss an action "if the plaintiff fails to prosecute or to comply with the rules or a court order." *Baptiste v. Sommers*, 768 F.3d 212, 216 (2d Cir. 2014); *accord Traore v. New York City Dep't of Corr.*, No. 22 Civ. 1429, 2023 WL 4187906, at *1 (S.D.N.Y. June 26, 2023). It is settled that Rule 41(b) "gives the district court authority to dismiss a plaintiff's case *sua sponte* for failure to prosecute." *LeSane v. Hall's Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001); *accord Lopez v. 3662 Broadway Rest. Corp.*, No. 19 Civ. 975, 2023 WL 3847141, at *2 (S.D.N.Y. June 6, 2023). Dismissal without prejudice is appropriate here. Plaintiff was "given notice that further delay would result in dismissal," *U.S. ex rel. Drake v. Norden Sys., Inc.*, 375 F.3d 248, 254 (2d

Cir. 2004). Dismissal without prejudice appropriately strikes a balance “between alleviating court calendar congestion and protecting a party's right to due process and a fair chance to be heard.” *Traore*, 2023 WL 4187906, at *1. It is hereby

ORDERED that the case is dismissed without prejudice. The Clerk of Court is respectfully directed to close the case.

Dated: July 31, 2023
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE